

WESFRAC, INC.

IBLA 99-148

Decided August 22, 2000

Appeal from a decision of the Area Manager, Grand Junction Resource Area, Bureau of Land Management, determining annual rental charges for right-of-way for a petroleum byproducts removal plant site. COC-099642.

Affirmed.

1. Appraisals--Mineral Leasing Act: Rentals--Oil and Gas: Pipelines: Rights-of-Way--Rights-of-Way: Appraisals--Rights-of-Way: Oil and Gas Pipelines

A BLM appraisal of the fair market rental value of a right-of-way for a petroleum byproducts removal plant site will be affirmed where the appraisal was based on a market survey of comparable rentals and the right-of-way holder has neither demonstrated error in that methodology nor shown that the resulting rental charges are excessive.

APPEARANCES: Ed Morris, President, Wesfrac, Inc., Fruita, Colorado, for appellant; Terri L. Anderson, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Wesfrac, Inc., has appealed the November 20, 1998, decision of the Area Manager, Grand Junction Resource Area, Bureau of Land Management (BLM), determining the annual rental charges for right-of-way COC-099642, issued for a site for a petroleum byproducts removal plant. The decision was based on an October 27, 1998, reappraisal.

On May 14, 1963, BLM issued right-of-way grant COC-099642 to Western Slope Gas Company, pursuant to section 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1994), authorizing the use of approximately 10.5 acres in the S½ sec. 34, T. 9 S., R. 101 W., sixth principal meridian, Mesa County, Colorado, for a petroleum byproducts removal plant. After several intervening assignments, Wesfrac obtained the right-of-way through an assignment approved by BLM on March 5, 1986. At that time,

the annual rental for the right-of-way grant was \$1,300. Subsequently, BLM reappraised the rental for the right-of-way in 1989 and, by decision dated October 18, 1989, advised Wesfrac that, beginning May 14, 1990, the annual rental for the grant would be \$1,500.

In October 1998, BLM again reappraised the market rental value for the right-of-way. In a limited appraisal report, dated October 23, 1998, and approved by the Chief State Appraiser on October 27, 1998, the appraiser described the property and determined that the authorized use of the property as a petroleum byproducts removal plant site constituted the highest and best use of the property. After discussing the three commonly recognized approaches to estimating market value, *i.e.*, the cost approach, the income approach, and the direct sales comparison or market data approach, she found the market data approach to be the most relevant methodology to determine fair market rental value in this case. She therefore utilized a market survey of analogous partial interest transactions on similar private land as the basis for her rental value determination.

In analyzing the data gleaned from a July and August 1996 BLM market survey of rural industrial sites in New Mexico, Wyoming, and Colorado, the appraiser noted that the prices paid for equivalent rights of use arose from negotiation and did not necessarily reflect land values. She found that the rights of use conveyed by the BLM grant, the grant's payment terms, and the BLM site's location, accessibility, and character were sufficiently similar to those of the private leases to vitiate any need to adjust the private lease rentals to compensate for differences in those factors. She selected four survey sites as the best indicators of current fair market rent for the right-of-way site: Wy 2, Wy 6, Co 6, and Co 15. She indicated that Co 15, a 5.33-acre site in Delta County, Colorado, used for coal stockpiling and loading, established the upper rental limit at \$967 per acre per year. As to the remaining sites, she stated that Wy 6, a 15-acre compressor station site in Carbon County, Wyoming, leased for \$534 per acre per year; Wy 2, a 10-acre site southeast of Wamsutter, Wyoming, used for a gas condensate stabilization plant, rented for \$400 per acre per year; and Co 6, a 7.256-acre compressor station site located in Weld County, Colorado, leased for \$207 per acre per year. She concluded that Wy 2 was the most comparable in size, location, and type of use and accordingly set the estimated market rental for the 10.5-acre petroleum byproducts removal plant site at \$400 per acre per year or \$4,200 annually. She noted that the rental represented a substantial increase over the previous rentals, which suggested that the right-of-way holder had previously enjoyed below market rates for the authorized use.

On November 20, 1998, BLM issued its decision advising Wesfrac that the reappraised rental for the right-of-way grant was \$4,200 per year. The decision also converted Wesfrac's rental billings to a calendar year basis and assessed \$2,800 as the prorated rental due for May 14 through December 31, 1998.

On appeal, Wesfrac objects to the increase in annual rental to \$4,200, asserting that the new rental amount is excessive and does not

reflect the true market value of the property, which it characterizes as 14 acres <sup>1/</sup> of arid desert land undesirable for recreational activities, distant from commercial activity and improved roads, and short of adequate electricity for commercial or industrial use. Wesfrac claims that the new \$4,200 rental rate represents a 323-percent increase from the original \$1,300 rental in place when it obtained the right-of-way grant, <sup>2/</sup> a percentage rise that does not correspond to the appreciation of land values in Grand Junction or any national inflation factor.

Wesfrac submits its own estimate of the fair market rental value of the right-of-way grant. Based on the Mesa County taxing authority's appraisal of the company's 41.50-acre main plant property, located approximately 11 miles away from the grant site in the middle of agricultural land, at \$9,660 or \$232.77 per acre, an amount representing 30 percent of the land's fair market value, Wesfrac extrapolates that the fair market value of the plant property is \$775.90 per acre. Adopting a private land appraiser's opinion that BLM values its leases at 8 to 12 percent of the fair market value, Wesfrac asserts that the proper rental for the right-of-way should be calculated by multiplying the \$775.90 per acre value by 8 to 12 percent to determine the per acre rental value of the site, and then multiplying that amount by the number of acres included in the grant. Wesfrac contends that using this formula produces an annual lease rental value of \$869 to \$1,303.51, <sup>3/</sup> and accordingly requests that the rental rate be reduced to \$869 to reflect the asserted real market rental value of the right-of-way.

In response, BLM contends that Wesfrac has failed to meet the required burden of proof to overturn a BLM appraisal because the company has not demonstrated error in the chosen appraisal methodology, shown the resulting rental charges are excessive, or submitted another appraisal establishing the unreasonableness of the rental. Further, BLM asserts that the comparable lease appraisal method embodied in the market survey utilized in this case is the preferred method for appraising nonlinear rights-of-way when sufficient leases exist to allow direct comparisons. Wesfrac's attempt to base fair market rental value on the county tax authority's appraisal fails, BLM submits, because the market data supporting BLM's market survey revealed no correlation between the agricultural land value underlying the tax assessment and the amount individual land owners negotiate for rural industrial site leases. Thus, BLM avers the

---

<sup>1/</sup> The right-of-way grant authorizes the use of only 10.5 acres, not 14 acres.

<sup>2/</sup> Wesfrac mistakenly asserts that the October 1998 rental increase was the first rental increase since it obtained the right-of-way. As noted *infra*, an Oct. 18, 1989, BLM order had previously adjusted the annual rental to \$1,500.

<sup>3/</sup> Wesfrac based these calculations on a 14-acre right-of-way. As noted above, the grant encompasses only 10.5 acres.

percentage of the land value appraisal approach espoused by Wesfrac is appropriate only when, unlike the situation here, inadequate comparable market leases are available for direct comparison.

In support of its response, BLM submitted a February 16, 1999, memorandum prepared by the appraiser in this case addressing the issues raised in Wesfrac's appeal. The appraiser stresses that the market data revealed no correlation between agricultural land value and the amount individual property owners were able to negotiate for rural industrial site leases and suggests that the previous method of establishing rental, *i.e.*, the percentage of land value method, underestimated the site's fair market rental, resulting in below market rental for the authorized use. She states that the percentage of land value, which the land appraiser consulted by Wesfrac endorsed, is employed only when insufficient comparable market leases are available for direct comparison which is not the case here. The appraiser concludes that the market survey of comparable rural industrial site leases utilized here is the proper and accepted method of determining the fair market rental value of nonlinear rights-of-way because adequate lease data exists to show the rent private parties negotiated for similar uses on equivalent sites, and thus clearly provides the best evidence of market value.

[1] Section 28(l) of the Mineral Leasing Act, as amended, 30 U.S.C. § 185(l) (1994), requires the holder of a right-of-way issued pursuant to that statute to "pay annually in advance the fair market rental value of the right-of-way \* \* \*, as determined by the Secretary." The Departmental regulation implementing this statutory provision, 43 C.F.R. § 2883.1-2, requires right-of-way holders to make rental payments in accordance with provisions of 43 C.F.R. § 2803.1-2, the regulation governing rentals for rights-of-way issued under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1994). <sup>4/</sup> That regulation directs right-of-way holders to pay annually in advance "the fair market rental value as determined by the authorized officer applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices." 43 C.F.R. § 2803.1-2(a). Such value represents the amount "for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desires but is not obligated to so use." Questar Service Corp., 119 IBLA 65, 67 (1991), citing American Telephone & Telegraph Co., 25 IBLA 341, 349-50 (1976); see also Rock Creek Joint Venture, 138 IBLA 6, 12 (1997).

An appraisal of fair market rental value for a right-of-way grant will not be set aside unless the appellant demonstrates error in the

---

<sup>4/</sup> The rental waiver and reduction provisions of 43 C.F.R. § 2803.1-2(b), however, are inapplicable to Mineral Leasing Act rights-of-way. See 43 C.F.R. § 2883.1-2.

appraisal method used by BLM or shows that the resulting charges are excessive. Absent a showing of error in the appraisal methods, an appellant is normally required to submit another appraisal in order to present sufficiently convincing evidence that the rental charges are excessive. See Amoco Corp., 139 IBLA 96, 99 (1997); Rock Creek Joint Venture, 138 IBLA at 13 and cases cited; see also 4-H Partnership, 149 IBLA 161, 166 (1999).

Wesfrac has not shown any error in the appraisal methodology used by BLM. Generally, the preferred method for appraising the fair market rental value of nonlinear rights-of-way is the comparable lease method, where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject site and other leased sites. Rock Creek Joint Venture, 138 IBLA at 12; Western Field Production, Inc., 116 IBLA 225, 228 (1990); Colorado Interstate Gas Co., 110 IBLA 171, 175 (1989). The market survey approach utilized by BLM here exemplifies the comparable lease appraisal method where the fair market rental value of the right-of-way emanates from a review of the rentals charged for similar leases with appropriate adjustments for any differences between the subject right-of-way and the selected comparable leases. Vernon Ravenscroft, 137 IBLA 39, 42-43 (1996); Laguna Gatuna, 121 IBLA 302, 307 (1991); Colorado Interstate Gas Co., 110 IBLA at 175-76. Thus we find no error in BLM's choice of appraisal method.

Wesfrac also has not demonstrated that the rental charges are excessive. The simple fact that the rental amount increased substantially from the previously assessed rental does not suffice to establish that the current valuation is excessive especially since BLM's market survey clearly demonstrates that the appraised rental reflects the current fair market rental value of the right-of-way grant. We reject Wesfrac's assertion that the fair market rental value of the site should be based on 8-12 percent of the per-acre value of its main plant, as extrapolated from the county taxing authority's appraisal of the plant property. The BLM market survey uncovered no relationship between agricultural land value and the amount individual property owners were able to negotiate for rural industrial site leases, thus negating the relevance of the county's valuation. Cf. Michael Dahmer, 132 IBLA 17, 27 (1995) (finding no necessary correlation between the per-acre purchase price for land and its per-acre rental value as a communication site). In any event, this percentage of land value approach has utility only when, unlike the situation here, insufficient comparable market leases are available for direct comparison with the right-of-way site.

Because Wesfrac has failed to demonstrate that BLM's appraisal methods are incorrect or that the rental is excessive and has not submitted another appraisal discrediting the rental charges, we uphold BLM's appraised rental valuation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

---

C. Randall Grant, Jr.  
Administrative Judge

I concur:

---

Bruce R. Harris  
Deputy Chief Administrative Judge

